

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EUGENE CARTER 143752,

Petitioner,

v.

CAROL R. HOWES,

Respondent.

CASE NO. 2:08-CV-14228  
HONORABLE VICTORIA A. ROBERTS  
UNITED STATES DISTRICT JUDGE

**OPINION AND ORDER EXTENDING TIME TO FILE THE APPEAL PURSUANT TO  
FEDERAL RULES OF APPELLATE PROCEDURE(4)(a)(5)**

On December 1, 2011, this Court dismissed Petitioner's habeas application brought pursuant to 28 U.S.C. § 2254. The Court also denied Petitioner a certificate of appealability, but granted him leave to appeal in forma pauperis. (Dkts. 14 and 15). Petitioner has now filed a motion with this Court, asking that the time for him to file a notice of appeal be extended. For the reasons stated below, the motion is GRANTED.

Petitioner requests that this Court issue an order that would permit him to file his notice of appeal. As the basis for this claim, Petitioner alleges that although he received a copy of the Court's opinion and order denying the petition for writ of habeas, a fellow prisoner assisting him filed his notice of appeal directly in the Sixth Circuit instead of with this Court. By the time Petitioner discovered the error, he alleges, the time for filing a notice of appeal had expired.

Fed. R. App. P. 4 (a)(1) states that a notice of appeal must be filed within thirty days of the entry of the judgment or order from which the appeal is taken. This time limit is

mandatory and jurisdictional. *Browder v. Director, Department of Corrections of Illinois*, 434 U.S. 257, 264 (1978). The failure of an appellant to timely file a notice of appeal deprives an appellate court of jurisdiction. *Rhoden v. Campbell*, 153 F. 3d 773, 774 (6th Cir. 1998). However, a party asserting good cause may seek relief within 30 days of the time for filing a notice of appeal under Federal Rule of Appellate Procedure 4(a)(5). *Zack v. United States*, 133 F.3d 451, 453 (6th Cir. 1998).

Fed.R.App.P. 4 (a)(5)(A) indicates that a district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) that party shows excusable neglect or good cause.

Petitioner filed the instant motion on January 12, 2012, within 30 days of the expiration of time to file his notice of appeal. The Court accepts his claim that he failed to timely file a notice of appeal because a prisoner assisting him with his appeal filed the notice in the wrong court. The Court will therefore grant the motion. In accordance with Fed. R. App. P. 4(a)(5)(C), the time for filing a notice of appeal is enlarged to fourteen days from the date of this order.

Accordingly, **IT IS ORDERED** that the motion to reopen time to file appeal (Dkt. 16) is **GRANTED**. Petitioner shall have fourteen (14) days from the date of this order to file a notice of appeal.

S/Victoria A. Roberts  
Victoria A. Roberts  
United States District Judge

Dated: January 26, 2012

The undersigned certifies that a copy of this document was served on the attorneys of record and Eugene Carter by electronic means or U.S. Mail on January 26, 2012.

s/Carol A. Pinegar

Deputy Clerk